PERSATUAN PEGAWAI-PEGAWAI BANK SEMENANJUNG MALAYSIA

v.

MINISTER OF LABOUR, MALAYSIA & ORS.

SUPREME COURT, KUALA LUMPUR
MOHD. AZMI SCJ
WAN HAMZAH SCJ
WAN SULEIMAN SCJ
[CIVIL APPEAL NO. 240 OF 1987]
25 NOVEMBER 1988

LABOUR LAW: *Trade Union - Section 12 of the Trade Unions Act 1959 - Leave to apply for certiorari - Registrar of Trade Unions to consider interest of other workmen in similar occupation - Failure to take into account sub-section (2) of s. 12 of the Trade Unions Act 1959.*

The appellant, a trade union of executive officers of commercial banks in Peninsular Malaysia received recognition of 17 commercial banks including the 4th respondent.

On 8 October 1986, the second respondent registered the third respondent. On 29 October 1986 the 4th respondent gave recognition to the third respondent and on the same date withdrew its recognition of the appellant.

The appellant appealed to the first respondent against the decision of the second respondent to register the third respondent. The first respondent dismissed the appeal.

The appellant obtained leave of the High Court to apply for an order of *certiorari* to remove into the High Court for the purpose of quashing the decision of the first respondent to dismiss the appellants appeal.

The High Court refused the application and the appellant appealed to the Supreme Court.

Held:

[1] The registration of the third respondent as a trade union was a nullity because the Registrar had failed to take into consideration the interest of the workmen in the particular occupation.

[2] The decision of the Registrar was a nullity because it cannot be said that all matters required by the law to be taken into consideration had in fact been taken into consideration by him.

[3] Appeal allowed with costs in Supreme Court and the High Court.

[4] Decision of the Minister and the registration of the Association as a trade union be quashed.

[Appeal allowed with costs. Decision of the Minister and the registration of the Association as a trade union be quashed.]

Legislation referred to:
Trade Unions Act 1959, ss. 12, (2)

For the appellant - B. Lobo; M/s. Lobo & Associates
For the first & second respondents - P.M. Mahalingam; Attorney General's Chambers
For the third respondent - Guru S. Johal; M/s. Nashir, Johal & Co.
For the fourth respondent - V. Chandran; M/s. Xavier & Chandran

JUDGMENT

Under s. 42 of the Courts of Judicature Act.

The appellant, Persatuan Pegawai-Pegawai Bank Semenanjung Malaysia (the Persatuan), is a trade union of executive officers of commercial banks in Peninsular Malaysia, established in 1978. In 1980 the Persatuan received recognition of 17 commercial banks in Peninsular Malaysia including the fourth respondent, Malayan Banking Berhad (the bank). On 8 October 1986 the second respondent, the Registrar of Trade Unions (the Registrar), registered the third respondent, the Association of Maybank Officers (the association) as a trade union of the executive officers in the employment of the bank. On 29 October 1986 the bank gave recognition to the association, and on the same date the bank withdrew its recognition of the Persatuan.

The Persatuan being aggrieved by the decision of the Registrar to register the association as a trade union appealed to the first respondent, the Minister of Labour (the Minister). The Minister dismissed the Persatuan's appeal. The Persatuan obtained leave of the High Court to apply for an order of *certiorari* to remove into the High Court for the purpose of its being quashed the decision of the Minister to dismiss the appeal, but the Persatuan failed in the application. Now the Persatuan appeals to the Supreme Court against Harun J's refusal to grant order of *certiorari*.

One of the grounds of appeal is that the Registrar and the Minister had failed to take into account certain provisions of the Trade Unions Act and that Harun J had erred in holding that the Registrar and the Minister had considered all the relevant provisions of the law. Among the provisions of the Trade Unions Act invoked by the appellant are the provisions of s. 12, which reads as follows:

> 12.(1) The Registrar may, upon receiving any application under s. 10, and subject to this section, register the trade union in the prescribed manner.
>
> (2) The Registrar may refuse to register a trade union if he is satisfied that there is in existence a trade union in respect of the particular trade, occupation or industry and it is not in the interest of the workmen in the particular trade, occupation or industry that there be another trade union in respect thereof.
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> (3) The registrar shall refuse to register a trade union if:
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> (a) he is of the opinion that the trade union is likely to be used for unlawful purposes or for objects and rules;
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> (b) any of the objects of the trade union is unlawful;
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> (c) he is not satisfied that the trade union has complied with this Act and of the regulations;
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> (d) he is satisfied that the objects, rules and constitution of the trade union conflict with any of the provisions of this Act or of any regulations; or
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> (e) the name under which the trade union is to be registered is:
>
> (i) identical to that of any other existing trade union, or so nearly resembles the name of such other trade union as, in the opinion of the Registrar, is likely to deceive the public or the members of either trade union; or
>
> (ii) in the opinion of the Registrar, undesirable, unless the trade union alters its name to one acceptable to the Registrar.

It appears that the Registrar purported to take into consideration sub-section (2) of s. 12 Trade Union Act 1959 when he registered the Association. In his affidavit the Registrar stated *inter alia* as follows:

> Having considered the relevant facts and law pertaining to this case in respect of the third respondent's application, I was satisfied that it is in the interest of the officers in fourth respondent bank to register the third respondent as a trade union in the manner prescribed by the Trade Unions Act 1959.

The Registrar did not state that he had also taken into consideration the interest of other workmen in similar occupation as the officers in the bank. It should be noted that sub-section (2) requires that the interest of the workmen in the particular occupation should be considered, not just the interest of the officers in the employment of the bank. Therefore it is clear that the Registrar had failed to correctly take into account the provisions of sub-section (2) of s. 12 of The Trade Union Act 1957, in our judgment the registration of the association as a trade union was a nullity because the Registrar had failed to take into consideration the interest of the workmen in the particular occupation, which he was required by the law to the take into consideration, and he had no power to register the association as a trade union without considering their interest. Similarly the decision of the Minister on appeal to confirm the registration was a nullity because it cannot be said that all matters required by the law to be taken into consideration had in fact been taken into consideration by him.

We allow the appeal with costs here and in the High Court and we order that the decision of the Minister and the registration of the association as a trade union be quashed.

Also found at [1989] 1 CLJ 4